



House of Representatives

General Assembly

File No. 65

February Session, 2002

House Bill No. 5090

House of Representatives, March 19, 2002

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE ALTERNATIVE RULE AGAINST PERPETUITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2002*) Sections 1 to 5, inclusive,
2 of this act may be cited as the Alternative Rule Against Perpetuities.

3 Sec. 2. (NEW) (*Effective October 1, 2002*) (a) The provisions of sections
4 1 to 5, inclusive, of this act shall not apply unless a testator, settlor,
5 transferor or other creator of a testamentary, revocable or irrevocable
6 inter vivos agreement or other document creating, amending or
7 restating a trust or granting a power of appointment makes a
8 qualifying election to have the Alternative Rule Against Perpetuities
9 apply to the interests created thereunder, in accordance with
10 subsection (b) of this section.

11 (b) In order to constitute a qualifying election: (1) The document
12 must evidence a specific intent to have the Alternative Rule Against

13 Perpetuities apply; (2) the document must, at the time of its execution,
14 provide that the law of this state shall govern the interpretation of the
15 document, and, in the case of a document creating a trust, the
16 administration of the trust; (3) the creator of the document or the
17 person exercising the power of appointment must be domiciled in this
18 state at the time the document is executed or the power is exercised, or,
19 in the case of a document creating a trust, one or more of the trustees
20 of the trust must be domiciled in this state at the time the document is
21 executed; (4) the document must not provide for the suspension of the
22 power of alienation with respect to property subject to the trust or the
23 power of appointment, as provided in subsection (c) of this section;
24 and (5) the document must be executed on or after October 1, 2002.

25 (c) For the purposes of subdivision (4) of subsection (b) of this
26 section: (1) The power of alienation is suspended if there is no person
27 alive who, alone or in combination with others, may, as to property
28 that is subject to the power granted or the trust created by the
29 document, convey (A) title to real property in fee, or (B) complete
30 ownership of personal property; (2) the power of alienation is not
31 suspended by a document creating a trust if (A) the trustee of the trust
32 has power, either expressed or implied, and either alone or in
33 combination with others, to sell property subject to the trust, or (B) at
34 least one person alive at the time the trust was created has an
35 unlimited power to terminate the trust.

36 (d) Interests created under a document making a qualifying election
37 to be subject to the Alternative Rule Against Perpetuities in accordance
38 with subsection (b) of this section, shall not be subject to the Uniform
39 Statutory Rule Against Perpetuities as provided in sections 45a-490 to
40 45a-496, inclusive, of the general statutes.

41 Sec. 3. (NEW) (*Effective October 1, 2002*) (a) A nonvested property
42 interest is invalid unless the interest either vests or terminates within
43 one thousand years after its creation.

44 (b) A general power of appointment not presently exercisable
45 because of a condition precedent is invalid unless the condition

46 precedent is either satisfied or becomes impossible to satisfy within
47 one thousand years after its creation.

48 (c) A nongeneral power of appointment or general testamentary
49 power of appointment is invalid unless the power is irrevocably
50 exercised or otherwise terminates within one thousand years after its
51 creation.

52 Sec. 4. (NEW) (*Effective October 1, 2002*) (a) Except as provided in
53 subsections (b) and (c) of this section, the time of creation of a
54 nonvested property interest or a power of appointment is determined
55 under general principles of property law.

56 (b) For the purposes of sections 1 to 5, inclusive, of this act, if there is
57 a person who alone can exercise a power created by a governing
58 document to become the unqualified beneficial owner of (1) a
59 nonvested property interest, or (2) a property interest subject to a
60 power of appointment described in subsection (b) or (c) of section 3 of
61 this act, the nonvested property interest or power of appointment is
62 created when the power to become the unqualified beneficial owner
63 terminates.

64 (c) For the purposes of sections 1 to 5, inclusive, of this act, a
65 nonvested property interest or a power of appointment arising from a
66 transfer of property to a previously funded trust or other existing
67 property arrangement is created when the nonvested property interest
68 or power of appointment in the original contribution was created.

69 Sec. 5. (NEW) (*Effective October 1, 2002*) In the case of a disposition
70 for which a qualifying election to be subject to the Alternative Rule
71 Against Perpetuities has been made pursuant to section 2 of this act,
72 upon petition of an interested person, a court shall reform such
73 disposition in the manner that most closely approximates the
74 transferor's manifested plan of distribution and is within the one
75 thousand years allowed by section 3 of this act if: (1) A nonvested
76 property interest or a power of appointment becomes invalid under
77 section 3 of this act; (2) a class gift is not but may become invalid under

78 section 3 of this act and the time has arrived when the share of any
79 class member is to take effect in possession or enjoyment; or (3) a
80 nonvested property interest may vest but not within one thousand
81 years after its creation.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>

JUD *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

OLR Bill Analysis

HB 5090

AN ACT CONCERNING THE ALTERNATIVE RULE AGAINST PERPETUITIES**SUMMARY:**

This bill creates the Alternative Rule Against Perpetuities (ARAP) allowing people to establish “dynastic trusts,” which can restrict the use, transfer, or ownership of property for up to 1,000 years under some circumstances. It does this by allowing people to (1) give others “nonvested property interests” (rights to property at some time in the future, also called “future interests”) and (2) specify ARAP’s applicability in the document that creates the interests. It establishes other rules limiting the use of ARAP and specifies when the 1,000-year period begins to run.

The bill applies to future interests created on or after October 1, 2002 under (1) wills, (2) revocable or irrevocable inter vivos trusts (trusts created during the creator’s lifetime), and (3) other instruments creating or amending trusts or granting someone a power of appointment (the power to decide who gets property).

Presumably, the only documents creating future interests that would be eligible to choose ARAP are those that would otherwise be subject to a shorter vesting period under current law (the Uniform Statutory Rule Against Perpetuities, USRAP). The bill specifies that USRAP does not apply when a qualified election of ARAP has been made. The vesting period under USRAP is the later of 90 years or 21 years after the death of an interest-holder who was alive (a “life in being”) when the donor created the future interests.

Finally, the bill creates a mechanism for a court to “reform” (i.e., rewrite) an ARAP trust before the expiration of the 1,000-year period if nonvested interests will not, or appear likely not to, vest or terminate during that period.

EFFECTIVE DATE: October 1, 2002

QUALIFYING ELECTIONS

Other conditions that must be met under the bill are that:

1. the document creating the future interest specify that Connecticut law governs its interpretation, and if it creates or amends a trust, its administration;
2. the person creating the document or the person exercising the power of appointment be domiciled in Connecticut at the time he signs the document or exercises the power, or, if the document creates a trust, at least one of the trustees be domiciled in Connecticut at the time the document is signed; and
3. the document not include terms that prohibit the sale or transfer of the trust's property ("suspend alienation").

SUSPENSION OF ALIENATION

The bill specifies that an arrangement is not qualified for ARAP if there is no person alive who, alone or in combination with others, may convey (1) title to the trust's real property "in fee" (without restrictions) or (2) complete ownership of its personal property. But such arrangements would be eligible for ARAP so long as:

1. the trustee is permitted to sell property in the trust 10 years after its creator loses the power to terminate the trust;
2. the trustee has the express or implied power to sell the trust's property at all times during the trust period, either alone or in combination with others; or
3. at least one person has an unlimited power to terminate the trust at all times during the trust period.

Similar rules apply under USRAP.

INVALID PROPERTY INTERESTS AND APPOINTMENTS

Under the bill, nonvested property rights are invalid unless they either vest or end within 1,000 years after they are created. General powers of appointment that cannot be exercised until a specific event ("condition precedent") occurs are invalid unless the event occurs or its occurrence becomes impossible within 1,000 years. Finally, a specific power of appointment or general testamentary power of appointment is invalid unless it is irrevocably exercised or ends within 1,000 years of its creation. USRAP contains similar rules (although the

relevant period under that statute is 90 years).

DETERMINING WHEN NONVESTED PROPERTY INTERESTS ARE CREATED

The bill makes the same timing rules apply to the creation of future interests under ARAP as apply under USRAP. Thus, in most situations, the 1000-year period runs from the date the document creating the interests was signed. But when the arrangement gives a specific person the right to become the sole owner of property, the period does not begin to run until that person can no longer exercise his right to do so. And, when the nonvested interests are created by adding property to an existing trust, the period is measured from the creation of that trust.

REFORMING TRUSTS

The bill permits an interested person to petition a court to reform a trust. The court must do so when (1) a nonvested property interest or a power of appointment becomes invalid because it cannot vest or terminate within 1,000 years; (2) a class gift (such as nonvested interests given to someone's children) is not, but may become, invalid because it cannot fully vest within 1,000 years and the time has arrived when the share of any class member is to take effect; or (3) a nonvested property interest may vest but not within 1,000 years of its creation. The reforming court must reform the trust in the manner that most closely approximates its creator's intent. The USRAP ties similar reformation provisions to its 90-year vesting period.

BACKGROUND

Rule Against Perpetuities

The Rule Against Perpetuities originated in English common law more than 400 years ago. Its purpose is to prevent property from being tied up and excluded from channels of commerce for long periods of time (sometimes referred to as "dead hand control"). It provides that a future interest in property must vest, if at all, within 21 years after the death of a person alive when the interest was created.

USRAP modifies the common rule in Connecticut, creating a vesting period of the later of 90 years or 21 years after the death of a life in being.

Exclusions

USRAP applies to most gifts and the following other types of property transfers:

1. premarital or postmarital agreements;
2. separation or divorce settlements;
3. spouses' elections;
4. similar arrangements arising out of a prospective, existing, or previous marital relationship;
5. contracts to make or refrain from revoking a will or trust;
6. contracts to exercise or refrain from exercising a power of appointment;
7. transfers in satisfaction of a duty of support; and
8. reciprocal transfers.

It does not apply to:

1. fiduciary powers to administer or manage assets;
2. powers to appoint a fiduciary;
3. discretionary powers of a trustee to distribute principal before terminating a trust to a beneficiary who has an indefeasibly vested interest in the income and principal;
4. nonvested property interests held by a charity, government, or governmental agency or subdivision, if the nonvested interest is preceded by an interest held by another such institution;
5. nonvested property interests or powers of appointment with respect to a trust or other arrangement forming a part of a pension, profit-sharing, stock bonus, health, disability, death-benefit, income-deferral, or other deferred benefit plan to which contributions are made, other than a non-vested property interest or power of appointment that is created by an election of a participant, beneficiary, or spouse; and
6. property interests, powers of appointment, or arrangements not subject to the common law rule against perpetuities or excluded by statute.

Powers of Appointment

A "power of appointment" is the authority to designate recipients of interests in or powers of appointment over property. It is "general" if

the person holding it can give the property or power to anyone he chooses. All other powers of appointment are “nongeneral” or “special.”

A power of appointment is “not presently exercisable because of a condition precedent” if it cannot be exercised until a certain condition occurs.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report

Yea 35 Nay 0